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Thurston County home invasion robbery conviction overturned by Appeals Court

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The Washington Court of Appeals has overturned a Thurston County kidnapping and robbery conviction, due to "insufficient evidence" and a prosecutor's misconduct, according to an opinion filed Tuesday.

The Appeals Court found that former Thurston County Deputy Prosecuting Attorney David Bruneau committed misconduct in presenting a PowerPoint slide to the jury during closing argument depicting the defendant's mug shot with the word "guilty" superimposed over the photograph.

In 2011, a jury convicted Deshone Herbin of first-degree burglary, three counts of first-degree kidnapping and four-counts of first-degree robbery. The Court of Appeals reversed the convictions in its opinion Tuesday, ruling that the state's evidence was insufficient to support three of his four first-degree robbery convictions. Herbin's convictions on the remaining charges were reversed based on the PowerPoint slides presented to the jury depicting Herbin's booking photo with the word "guilty" printed on it.

"Because the prosecutor's misconduct in presenting highly inflammatory slides containing Herbin's altered booking photograph had a substantial likelihood of affecting the jury verdict that was incurable by a jury instruction, we reverse Herbin's remaining convictions and remand for a new trial," reads the Appeals Court's opinion.

A judge sentenced Herbin to 52 years and five months in prison following the guilty verdict.

On Friday, Thurston County Chief Criminal Deputy Prosecuting Attorney Andrew Toynbee said his office will retry Herbin. Toynbee added that his office will ask that Herbin remain in custody as the case is retried.

Toynbee said that he does not agree that Bruneau's actions in presenting the PowerPoint slide with the word "guilty" printed over Herbin's photo constituted "misconduct." Toynbee added that when Bruneau gave his closing argument in Herbin's case in 2011 and presented the PowerPoint slide, the Washington Supreme Court had not yet decided such activity was improper. The Appeals Court's opinion on Tuesday overturning Herbin's conviction relied upon a subsequent state Supreme Court opinion that ruled such PowerPoint slides are prejudicial and constitute misconduct, he said.

Toynbee added that he does not believe presenting a PowerPoint slide with the word "guilty" printed on a booking photo at trial is prejudicial - he said he believes jurors are sophisticated enough to realize that such items are not evidence. However, Toynbee said that prosecutors in Thurston County no longer take part in such activity, after the state Supreme Court ruled it is improper.

Herbin and two other suspects were arrested and charged in connection with a Dec. 27, 2009 home invasion robbery in Olympia. During the robbery, three men broke into the home, and stole items including cash, a laptop, a television, and paintball equipment. One of the suspects was armed with a shotgun during the robbery. The occupants of the home were threatened with the firearm and forced to lie down in the kitchen area as the intruders ransacked the residence.

The two other suspects also were convicted and sentenced for their roles in the home invasion robbery - their cases were not overturned.

Bruneau left the Thurston County Prosecuting Attorney's Office in January, 2011. His contract was not renewed by elected Prosecuting Attorney Jon Tunheim when after Tunheim was elected in November, 2010.

A similar appeal issue involving the use of a PowerPoint slide has been raised involving a Thurston County murder case. Robert Maddaus has appealed his 2011 murder conviction based on an objection similar to Herbin's. Maddaus was sentenced to life in prison for the 2009 shooting death of Shaun Peterson in Olympia. The Appeals Court has yet to rule on Maddaus' appeal, however.

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Read more here: <http://www.theolympian.com/2013/05/24/v-print/2557990/thurston-county-home-invasion.html#storylink=cpy>